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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL LLC, a Delaware limited  
liability company,

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal  
corporation, COUNTY OF SAN  
FRANCISCO, a subdivision of the State  
of California, CITY AND COUNTY OF  
SAN FRANCISCO, a chartered California  
city and county and DOE 1 through DOE  
10,

Defendants.

Case No. C07-6067 JSW

The Honorable Jeffrey S. White

**JOINT CASE MANAGEMENT  
STATEMENT**

Hearing Date: July 11, 2008  
Time: 1:30 P.M.  
Place: Courtroom 2, 15<sup>th</sup> Fl.

1           1.     Jurisdiction and Service:

2           Plaintiff invokes the Court's jurisdiction on the basis of the existence of a federal question and  
3 deprivation of civil rights pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Plaintiff also brings this  
4 action under the Civil Rights Act, 42 U.S.C. § 1983, et seq. and the Declaratory Judgment Act, 28  
5 U.S.C. §§ 2201 and 2202.

6           Venue in this district is proper under 28 U.S.C. § 1391(b) in that the claims asserted in this  
7 Complaint arose in the Northern District of California.

8           Defendant does not object to service and no parties remain to be served at this time.

9           2.     Facts:

10          Plaintiff alleges:

11          Plaintiff is engaged in the business of outdoor advertising in San Francisco through its  
12 operation of so-called “panel signs.” Panel signs, also known as “light boxes,” are internally  
13 illuminated poster advertisements that have a surface area of approximately 24 square feet  
14 (approximately 6 feet by 4 feet).

15          Article 6 of the San Francisco Planning Code (the “Sign Ordinance”) places severe  
16 restrictions on Plaintiff’s ability to operate panel signs within the City. It does so in two fundamental  
17 ways. First, through its adoption of Proposition G in March 2002, the City added Section 611 to its  
18 Sign Ordinance, which purports to impose a complete and total ban on any and all new “general  
19 advertising signs” – signs that direct attention to goods, services, or activities offered elsewhere than  
20 on the premises upon which the sign is located – including virtually all of Plaintiff’s panel signs.  
21 Second, with respect to those panel signs that were installed prior to March 2002 and therefore are  
22 not subject to the prospective ban, the Sign Ordinance contains a slew of highly restrictive underlying  
23 zoning regulations that, if enforced, would prohibit most, if not all, of Plaintiff’s panel signs. *See*  
24 *generally* Sign Ordinance §§ 605-608.

25          The City has claimed that both its total ban on new advertising signs, and its underlying  
26 zoning restrictions governing pre-ban advertising signs, are necessary to preserve and protect “traffic  
27 safety” and “aesthetics.” The City’s own conduct, however, belies these supposed justifications and  
28

1 proves that they are nothing more than empty pretexts. Tellingly, in enacting the Sign Ordinance, the  
2 City bestowed itself with blanket exemptions for thousands of its own advertising signs – signs that  
3 are virtually identical to Plaintiff’s signs in terms of size, illumination, and appearance; that often are  
4 located in close proximity to Plaintiff’s signs; but that, unlike Plaintiff’s signs, generate hundreds of  
5 millions of dollars for the City.

6 The City has, for example, entered into an exclusive contract with Clear Channel Outdoor,  
7 Inc. to place advertising signs on all of the City’s bus shelters, notwithstanding that all such  
8 advertising violates the very Sign Ordinance provisions – including the City’s underlying zoning  
9 regulations – that supposedly render Plaintiff’s panel signs illegal. The City has conveniently given  
10 its bus shelters a blanket exemption, set forth in section 603(j) of the Sign Ordinance, that immunizes  
11 such advertising signs from all of the rules governing advertising signs. The same is true for the  
12 City’s contract with private franchisees to install and operate hundreds of newsracks and hundreds of  
13 so-called “public service kiosks” bearing advertising signs on its streets. These advertising signs  
14 have conveniently been given a blanket pass through sections 603(m) (public service kiosks) and  
15 603(n) (newsracks) of the Sign Ordinance.

16 Plaintiff contends that it cannot seriously be disputed that the City-sanctioned street furniture  
17 advertising signs that now blanket the streetscape are at least as “dangerous” and “unsightly” as  
18 Plaintiff’s panel signs allegedly are. The City’s signs invariably are, by design, significantly closer to  
19 the curb line than Plaintiff’s signs and thus are, if anything, more visible and distracting to motorists  
20 and pedestrians. But the City embraces its franchisees’ signs because it profits handsomely by doing  
21 so. The Supreme Court has made clear that this kind of government hypocrisy is constitutionally  
22 fatal.

23 Plaintiff contends that it is threatened with imminent irreparable harm. The City has engaged  
24 in an aggressive campaign of harassing Plaintiff’s lessors – those who own the land on which  
25 Plaintiff’s panel signs sit – including by boldly assuring lessors that this lawsuit is a clear loser. As a  
26 result, many lessors – who have been assessed substantial escalating fines and threatened with liens  
27 on their properties – have vowed to take down their signs absent immediate relief from this Court;  
28 several lessors already have actually done so; and one lessor recently went so far as to *sue* Plaintiff in

1 Superior Court for failing to protect its lessors. This widespread lessor unrest is getting worse by the  
2 day and is posing an imminent and grave threat to Plaintiff's business.

3 Defendant alleges:

4 Defendant asserts that Plaintiff's First Amended Complaint only puts San Francisco Planning  
5 Code section 611 at issue. In 2002, San Francisco voters passed Proposition G, codified at Planning  
6 Code section 611, which prohibited the erection of new billboards anywhere in San Francisco. S.F.  
7 Planning Code § 611(a). As part of Proposition G, voters determined that "[g]eneral advertising signs  
8 contribute to blight and visual clutter as well as the commercialization of public spaces within [San  
9 Francisco]" (S.F. Planning Code section 611(f)(2) and that "San Francisco must protect the character  
10 and dignity of the City's distinctive appearance . . . for both residents and visitors" by prohibiting new  
11 general advertising signs (S.F. Planning Code section 611 (f)(4.)).

12 Although Proposition G prohibited the erection of new billboards in San Francisco, it does not  
13 prohibit the placement of signs "in the public right of way as permitted by local law." S.F. Planning  
14 Code § 611(c). San Francisco has entered into a number of contracts for the placement of general  
15 advertising and other signs in the public right of way.

16 Defendant asserts that this ban and exception is consistent with U.S. Supreme Court and 9<sup>th</sup>  
17 Circuit case law.

18 Moreover, Defendant asserts that Plaintiff's signs are in violation of other local ordinances  
19 (Building and Electrical Codes and other sections of the Planning Code) not at issue in this litigation.

20 The parties previously informed the Court that the United States Court of Appeals for the  
21 Ninth Circuit heard oral argument for June 4, 2008, at 9:00 a.m., in Pasadena, California, in *Metro*  
22 *Lights, L.L.C. v. City of Los Angeles*, 488 F.Supp.2d 927 (C.D. Cal. 2006), *appeal docketed*, No. 07-  
23 55179 (9<sup>th</sup> Cir. Feb. 1, 2007) and *Metro Lights, L.L.C. v. City of Los Angeles* No. 04-1037, 2006 WL  
24 4941839 (C.D. Cal. Nov. 3, 2006), *appeal docketed*, No. 07-55207 (9<sup>th</sup> Cir. Feb. 9, 2007). Both  
25 parties believe that the issues under consideration in the two appeals mentioned above are close to the  
26 issues involved in this litigation. Both parties also informed the court that because of the closeness of  
27 the issues involved it would be prudent and efficient for the parties and for the Court to stay the  
28 present litigation until the Ninth Circuit resolves the two appeals. Plaintiff is certainly willing to

1 agree to a stay, provided of course that such a stay include a stay of enforcement of the regulations  
2 being challenged. Unfortunately, however, the parties were not able to negotiate mutually agreeable  
3 enforcement stay terms. Plaintiff remains willing to discuss a stay, but obviously cannot agree to a  
4 stay of the case that enables Defendants to continue to ticket and fine Plaintiff's panel signs and to  
5 threaten Plaintiff's lessors with liens on their properties. Defendant asserts that the Court should stay  
6 this matter until the Ninth Circuit resolves the two appeals.

7 3. Legal Issues:

8 Plaintiff alleges:

9 The City cannot trample on Plaintiff's First Amendment right to engage in protected  
10 commercial speech where, as here, the City's scheme contains enormous exemptions that  
11 substantially undermine its stated regulatory rationale. *See, e.g., Greater New Orleans Broadcasting*  
12 *Ass'n, Inc. v. U.S.*, 527 U.S. 173, 174 (1999) (striking down scheme restricting commercial speech  
13 because the "regulatory regime is so pierced by exemptions and inconsistencies that the Government  
14 cannot hope to exonerate it"). Applying this Supreme Court case law to a factual scenario virtually  
15 identical to the one presented in this case, the District Court in *Metro Lights* struck down Los  
16 Angeles's ban on new general advertising signs in *Metro Lights, LLC v. City of Los Angeles*, 488 F.  
17 Supp. 2d 927 (C.D. Cal. 2006). More recently, the Central District relied on *Greater New Orleans*  
18 and *Metro Lights* to strike down Los Angeles's underlying zoning rules prohibiting freeway  
19 advertising signs. *See World Wide Rush, LLC v. City of Los Angeles*, \_\_ F. Supp. 2d \_\_, 2008 WL  
20 2477440 (C.D. Cal. Jun. 9, 2008) (relying on *Greater New Orleans* and *Metro Lights* to strike down  
21 Los Angeles's underlying zoning rules prohibiting freeway advertising signs).

22 Defendant alleges:

23 San Francisco Planning Code section 611 is a constitutional restriction of general advertising  
24 signs under *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981) and *Central Hudson Gas &*  
25 *Electric Corp. v. Public Service Comm'n*, 447 U.S. 557 (1980).

1           4.     Motions:

2           Plaintiff is seeking the Court's permission to file a motion for preliminary injunction, as the  
3 City has now issued citations demanding that it cease displaying messages at some of the sites  
4 involved in this litigation. On July 3, 2008, Plaintiff filed an administrative motion for leave to file a  
5 motion for preliminary injunction. Defendant will file a response by July 9, 2008 addressing certain  
6 issues.

7           Defendant intends to file a motion for judgment on the pleadings to be heard at the same time  
8 as Plaintiff's motion for preliminary injunction. If necessary, Defendant will file a motion for  
9 summary judgment.

10          The parties do not anticipate that there is any substantial likelihood of motions to add any  
11 other parties or to transfer venue.

12          5.     Amendment of Pleadings:

13          Plaintiff has already filed a First Amended Complaint. The parties do not anticipate further  
14 amending the pleadings.

15          6.     Evidence Preservation:

16          The parties affirm that they have taken all reasonable steps to preserve any evidence in this  
17 case, including interdiction of any document destruction program and any ongoing erasures of emails,  
18 and other electronically recorded material.

19          7.     Disclosures:

20          Plaintiff has disclosed to counsel for Defendant the basis for its claim that the current ban on  
21 off-site advertising (what are termed "general advertising signs" in Defendant's current ordinance) is  
22 unconstitutional both facially and as-applied. Part of the basis of Plaintiff's claim is that while  
23 banning signs from private property, Defendant has actually substantially increased the total number  
24 of off-site advertising signs by allowing their placement of public property through its contracts with  
25 various media companies, including JC Decaux and Clear Channel Outdoor, Inc. Plaintiff contends  
26 that the entry into such contracts while at the same time banning all such signs on private property  
27 and taking steps to enforce the ban through the threat of criminal prosecution violates its  
28 constitutional rights as described in the Amended Complaint.

1 Plaintiff has requested that the City provide a list detailing the locations of all of its street  
2 furniture bearing advertising signs. Defendants agreed in theory to produce such lists, provided that  
3 Plaintiff produce a variety of materials to which Plaintiffs object. Plaintiff has agreed to produce a  
4 list detailing the locations of all of its Panel Signs, but contends that the remainder of Defendants'  
5 requests are overly broad given the current posture of this case. Plaintiff notes that it has repeatedly  
6 offered to produce a list of its sign locations to Defendant, and contends that Defendant has not been  
7 reasonable (a) with respect to the voluminous information it purports to need and (b) by refusing to  
8 produce any location lists to Plaintiff absent full compliance with Defendant's demands. Because the  
9 parties have not come to an agreement, no lists have been exchanged.

10 Defendant requested certain documents that are relevant to defeating Plaintiff's motion for  
11 preliminary injunction. As noted above, Defendant will only produce, under certain circumstances, a  
12 list of its sign locations.

13 Fed. R. Civ. P. 26 disclosures have not yet been made, although the parties intend to do so this  
14 week.

15 8. Discovery:

16 Neither party has conducted any discovery or made Fed. R. Civ. P. 26 disclosures. Plaintiff  
17 intends to move for a preliminary injunction as soon as possible and contends that no discovery is  
18 necessary in order to facilitate the adjudication of that motion (other than the exchange of the location  
19 lists discussed above).

20 Defendant contends that it needs to conduct discovery to oppose Plaintiff's motion for a  
21 preliminary injunction. For example, although Plaintiff's counsel has agreed to provide the City  
22 Attorney's Office with a list of Plaintiff's sign locations in San Francisco, Plaintiff has yet to produce  
23 such a list (although, as noted above, Plaintiff has repeatedly confirmed in writing that it is willing to  
24 exchange location lists immediately). Defendant contends that Plaintiff has refused to comply with  
25 San Francisco Planning Code section 604.2, by providing the City with an inventory of its general  
26 advertising signs in San Francisco, and that Defendant therefore cannot oppose Plaintiff's motion for  
27 a preliminary injunction in a meaningful way.  
28

1 In the event the Court does not grant Defendant's motion for judgment on the pleadings, the  
2 parties intend to conduct written depositions (interrogatories, requests for admission and request for  
3 production of documents) and notice depositions. The parties are unaware of any need for specialized  
4 or supplemental rules of discovery in this action.

5 9. Class Actions:

6 This is not presently a class action.

7 10. Related Cases:

8 There are no related cases.

9 11. Relief:

10 Plaintiff contends that the regulations being challenged should be preliminarily and  
11 permanently enjoined as applied to Plaintiff.

12 Defendant asserts that Plaintiff is not entitled to any relief. Defendant has not pleaded any  
13 counterclaims.

14 12. Settlement and ADR:

15 The parties do not believe that this case can be settled and believe that this case is a poor  
16 candidate for ADR because Plaintiff's claim is legal in nature.

17 13. Consent to Magistrate Judge For All Purposes:

18 Defendant declined to consent to the assignment of this case to a Magistrate Judge and the  
19 case has been assigned to a United States District Judge.

20 14. Other References:

21 This case is not suitable for reference to binding arbitration, a special master or the judicial  
22 panel on multi-district litigation.

23 15. Narrowing of Issues:

24 The issues were narrowed significantly when Plaintiff filed and Amended Complaint in April.  
25 The parties do not believe the issues can be further narrowed without motion practice.

26 16. Expedited Schedule:

27 This is not the type of case that can be handled on an expedited basis with streamlined  
28 procedures.



1           17.    Scheduling:

2           On February 19, 2008, the Court issued an Order Scheduling Trial and Pretrial Matters setting  
3 the following dates:

4           DiscoveryCutoff	June 23, 2009
5           Expert Discovery Cutoff	July 24, 2009
6           Last day for filing dispositive motions	June 30, 2009
7           Last day for hearing on dispositive motions	August 21, 2009, 9:00 a.m.
8           Pretrial Conference	September 28, 2009, 2:00 p.m.
9           Trial	October 26, 2009, 8:30 a.m. (10 days)

10          18.    Trial:

11          Plaintiff requests that this matter proceeds by jury trial and estimates a trial time of ten days.  
12 Plaintiff estimates that it will call between five and ten witnesses.

13          Defendant also request that this matter proceed by jury and estimate a trial time of ten to  
14 fifteen days.

15          19.    Disclosure of Non-party Interested Entities or Persons:

16          Plaintiff has filed the "Certification of Interested Entities or Persons."

17          Plaintiff states that other than the named parties, there are no other persons, firms,  
18 partnerships, corporations or other entities known by the parties to have either: (i) a financial interest  
19 in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest  
20 that could be substantially affected by the outcome of the proceeding.

21          ///

22          ///

23          ///

24          ///

25          ///

26          ///

27          ///

28          ///

20. Other Matters:

None.

Date: July 7, 2008

EMERY CELLI BRINCKERHOFF & ABADY LLP

By:                     /S/                    .  
ERIC HECKER

Attorneys for Plaintiff METRO FUEL LLC.

Date: July 7, 2008

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OF SAN FRANCISCO

Date: July 7, 2008

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By:                     /S/                    .  
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Attorneys for Defendant CITY AND COUNTY  
OF SAN FRANCISCO

**SIGNATURE ATTESTATION**

(U.S.D.C. N.D. Cal. General Order 45, Section X.B.)

Concurrence in the filing of this document has been obtained from each other signatory, or from the single signatory, in compliance with General Order 45, Section X.B.

Dated: July 7, 2008

DENNIS J. HERRERA  
City Attorney  
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